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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**
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10 MATTHEW R. LINDNER, *et al.*,

11 Plaintiffs,

12 v.

13 FORD MOTOR COMPANY, *et al.*,

14 Defendants.
15

Case No. 2:10-cv-00051-LDG (VCF)

ORDER

16 Defendant Evenflo Company, Inc., moves for summary judgment due to lack of
17 admissible evidence of a design defect (#56), which motion the plaintiffs (Matthew Lindner,
18 individually, as surviving spouse and heir of Elsy Leticia Granados-Martinez, as surviving
19 parent and legal heir of Camila Lynete Lindner, and as Guardian Ad Litem of Paulina
20 Granados-Martinez) oppose (#57). Having considered the papers, pleadings, and
21 admissible evidence, the Court will grant the motion.

22 Standard of Review: Motion for Summary Judgment

23 In considering a motion for summary judgment, the court performs “the threshold
24 inquiry of determining whether there is the need for a trial—whether, in other words, there
25 are any genuine factual issues that properly can be resolved only by a finder of fact
26 because they may reasonably be resolved in favor of either party.” *Anderson v. Liberty*

1 *Lobby, Inc.*, 477 U.S. 242, 250 (1986). To succeed on a motion for summary judgment,
2 the moving party must show (1) the lack of a genuine issue of any material fact, and (2)
3 that the court may grant judgment as a matter of law. Fed. R. Civ. Pro. 56(c); *Celotex*
4 *Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

5 A material fact is one required to prove a basic element of a claim. *Anderson*, 477
6 U.S. at 248. The failure to show a fact essential to one element, however, "necessarily
7 renders all other facts immaterial." *Celotex*, 477 U.S. at 323.

8 "[T]he plain language of Rule 56(c) mandates the entry of summary judgment, after
9 adequate time for discovery and upon motion, against a party who fails to make a showing
10 sufficient to establish the existence of an element essential to that party's case, and on
11 which that party will bear the burden of proof at trial." *Id.* "Of course, a party seeking
12 summary judgment always bears the initial responsibility of informing the district court of
13 the basis for its motion, and identifying those portions of 'the pleadings, depositions,
14 answers to interrogatories, and admissions on file, together with the affidavits, if any,' which
15 it believes demonstrate the absence of a genuine issue of material fact." *Celotex*, 477 U.S.
16 at 323. As such, when the non-moving party bears the initial burden of proving, at trial, the
17 claim or defense that the motion for summary judgment places in issue, the moving party
18 can meet its initial burden on summary judgment "by 'showing'—that is, pointing out to the
19 district court—that there is an absence of evidence to support the nonmoving party's case."
20 *Celotex*, 477 U.S. at 325. Conversely, when the burden of proof at trial rests on the party
21 moving for summary judgment, then in moving for summary judgment the party must
22 establish each element of its case.

23 Once the moving party meets its initial burden on summary judgment, the non-
24 moving party must submit facts showing a genuine issue of material fact. Fed. R. Civ. Pro.
25 56(e). As summary judgment allows a court "to isolate and dispose of factually
26 unsupported claims or defenses," *Celotex*, 477 U.S. at 323-24, the court construes the

1 evidence before it "in the light most favorable to the opposing party." *Adickes v. S. H.*
2 *Kress & Co.*, 398 U.S. 144, 157 (1970).

3 Background

4 Evenflo makes the Embrace child restraint system: a rear-facing, two-piece child
5 seat for use in vehicles. The two pieces of the system consist of the carrier and a
6 convenience base. The convenience base is belted to the vehicle seat using the vehicle's
7 seat belt. The carrier attaches to the convenience base pursuant to a three-point latching
8 system. The carrier has a system of harness straps, buckle and anchors used to secure
9 the infant, a carrying handle, and a release handle. The carrier is detached from the
10 convenience base by depressing the release handle.

11 On August 14, 2008, Linder's seven-month old infant, Camila, died in a vehicle
12 accident while secured in an Evenflo Embrace child restraint system. While driving down a
13 divided highway, the driver fell asleep and lost control of the vehicle. The vehicle left the
14 roadway, re-entered the road, crossed over to the median, rolled over multiple times, and
15 eventually came to rest on its wheels, facing the opposite direction of its original travel.
16 During the accident, the carrier detached from its convenience base and Camila, still
17 secured in the carrier, was ejected from the vehicle.

18 Analysis

19 Lindner alleges, in his lawsuit against Evenflo, that the carrier detached from its
20 base due to a design defect, "[s]pecifically, the Embrace's latching mechanism provided no
21 countermeasures to prevent the release handle from being actuated during the subject
22 rollover." Opposition at 4. Evenflo argues, and Lindner does not dispute, that each of
23 Lindner's claims against Evenflo rests on the allegations that the Embrace was defectively
24 designed and that this defective design was a proximate cause of Camila's injuries.
25 Evenflo further argues, and Lindner does not dispute, that to maintain his claims Lindner
26 must present expert testimony of the defective design and causation, as the complexity of

1 these issues is beyond common experience, and a lay juror would lack the necessary
2 knowledge and experience to render a just and proper decision in the absence of expert
3 testimony.

4 Finally, Evenflo argues that, while Lindner has designated experts, those experts do
5 not offer *admissible* expert opinion evidence of the design defect and its causation of
6 Camila's injuries. Lindner counters Dr. Arthur Hoffman, his car seat expert, has provided
7 substantial evidence that the carrier release handle is vulnerable to unintended unlatching
8 during the dynamics of a rollover. He further contends that John Smith, his biodynamics
9 expert, has provided evidence that the carrier separated from the convenience base as a
10 result of an unintended actuation of the release handle.

11 For the reasons set forth below, the Court concludes that the opinions of Lindner's
12 experts are inadmissible. As noted above, Lindner summarizes the opinion of Hoffman as
13 a vulnerability to unintended unlatching during the dynamics of a rollover. The summary is
14 inaccurate because it is an overly broad characterization of Hoffman's proffered opinion.
15 Hoffman's written Preliminary Expert Report, his subsequent Lindner Case Summary, and
16 his deposition testimony indicate a distinctly narrower opinion. As stated in the Lindner
17 Case Summary, "it is my professional engineering opinion that the inadvertent separation
18 of the Evenflo Embrace infant carrier from the vehicle secured base was the result of the
19 [child restraint system] impacting the right front passenger seat back at some point during
20 the accidental rollover event. If the detachment occurred when the vehicle and infant seat
21 was [sic] inverted, the failure would have been aggravated by gravity, inertia and/or
22 rotational acceleration forces." As Hoffman further opined, "the Embrace [child restraint
23 system] release handle, which directly faces the back of the driver or passenger front seat,
24 is exposed and unprotected when the carry handle is in the 'stand' position." As Hoffman
25 testified in his deposition:

1 Question: And it's my understanding that your opinion, as we sit here today, is
2 that the red release handle made direct contact with some part of the
3 front passenger seat and that caused the carrier to release from the
4 base?

5 Answer: Yes.

6 Question: And you hold that opinion to a reasonable degree of –

7 Answer: Yes.

8 Question: – certainty?

9 Hoffman Deposition, pgs. 28 - 29.¹

10 While Lindner generally asserts, in his opposition, that Hoffman “details his work and
11 the basis for his expert opinion” in his Preliminary Expert Report and his Lindner Case
12 Summary, Lindner does not specifically cite to any portion of either document. By contrast,
13 Evenflo extensively reviews and specifically cites to Hoffman's deposition testimony
14 relevant to his stated opinion. Hoffman testified:

15 Answer: So you know that this thing hit that seat at a lower level.

16 Question: Okay, you know the carry handle, in your opinion, hit the seat back –

17 Answer: I believe it did.

18 Question: – at a low level. I'm trying to find that picture.

19 Answer: Uh-huh.

20 Question: Here we go, it's Exhibit 9. Okay.

21 Answer: Yeah, it's down in this area.

22 Question: Okay. So –

23 Answer: Now, this seat was probably askew some.

24 ¹ Elsewhere in his deposition, Hoffman stated his opinion:
25 I believe the reason for that [the inadvertent separation of the carrier from the
26 base] was the close proximity of the – the infant seat, the Embrace infant
seat, to the – and the release handle of that seat being exposed to the
passenger front seat. I believe there was an impact of the child infant seat
handle and the – the passenger front seat, which was also deformed and
slightly reclined, and the handle was exposed, and that is what caused the
inadvertent separation.

Hoffman Deposition, pg. 14. He further testified:

But I think in this case and I think all of the evidence points to the seat – the
infant seat release handle hitting the front seat, and the front seat also being
deformed, and that combination caused the handle to be torn out of the child
seat.

Hoffman Deposition, pg. 15.

- 1 Question: All right. Now, that crease or indentation that we see in Exhibit 9
2 doesn't appear to be the shape of this release – this zigzag release
3 handle to me.
4 Answer: Well, it might have been this portion of it.
5 Question: Okay.
6 Answer: There's no question that something hit that seat. I'm assuming it's this
7 handle.
8 Question: I got you.
9 Answer: Doesn't really have to be that handle, because this handle is exposed.
10 Question: So do you really know exactly what portion of the interior –
11 Answer: No, I don't.
12 Question: – of the vehicle hit the release handle?
13 Answer: No, I do not. I do know that typically on – these child seats impact the
14 front seat on both the sled testing and the crash testing half of the
15 times or almost half of the times that it's been tested. So I think it's
16 fairly likely.
17 Question: Well, the fact that some portion of the – I'm – certainly, I'm not going to
18 bicker with you about the statistics, I'm not trying to say you're
19 necessarily right about half the time, but it doesn't matter if the child
20 seat, at some location other than the release handle, hits another
21 portion of the interior of the vehicle. In order to get the child seat to
22 release, that release handle has to be depressed, right?
23 Answer: Yes, it's got nothing to do with the carry handle, as such.
24 Question: Do you have any statistics as to – from any test, as to how often a
25 release handle, if ever, has impacted a front seat?
26 Answer: I have none.

Hoffman Deposition, pgs 188-190. The Court has quoted this extensive portion of the deposition testimony because it establishes several things. First, based upon a photograph of the rear of the Explorer's front passenger seat, Hoffman has "no question" that something hit the seat, but he acknowledges that he has assumed it is the handle of the carrier that struck the front seat. The colloquy is ambiguous as to whether Hoffman is referring to the carrying handle or the release handle. As this matter is before the Court on Evenflo's motion for summary judgement, the Court construes the ambiguity in favor of Lindner, and thus construes the statement as a reference by Hoffman to the release handle. Critical to the admissibility of Hoffman's opinion, however, is his concession that he assumed the release handle hit the seat. Upon further questioning, Hoffman supports his opinion that the release handle hit the front seat by referencing testing indicating that the child seat would impact the front seat approximately half of the time. Hoffman then

1 conceded that the issue wasn't whether any portion of the child seat would impact the front
 2 seat during such a test, but whether the release handle was depressed. He further
 3 conceded lacking any statistic from any test indicating the frequency at which the release
 4 handle impacted the front seat. In sum, in this passage Hoffman conceded that he
 5 assumed the release handle hit the front seat, and that the assumption was based solely
 6 on his determination, from a photograph of the front seat, that something had struck the
 7 front seat during the accident, and that based upon results of sled and crash tests it is likely
 8 that the child seat struck the front seat. Hoffman further conceded the lack of any test
 9 result showing that the release handle would strike the front seat.

10 Lindner's biomechanics expert, John Smith, testified as to a "minor" disagreement
 11 with Hoffman, that he characterized as "nothing significant." Smith testified:

12 Answer: Now, he [Hoffman] believes that it was the seat interaction that
 13 released the handle. From a rollover standpoint and a biomechanic
 standpoint, there's a lot of other things that could have released that
 handle.

14 Question: Do you have an opinion to a reasonable degree of engineering
 15 certainty as to what precisely caused the detachment of the carrier
 from the base?

16 Answer: Well, the evidence indicates that the handle was pushed releasing it
 and that's what caused it to come un- -- separated from the base.

17 Question: What pushed the handle, in your opinion?

18 Answer: There's no way to know at this point. There's certainly, -- according to
 the testimony of the father, there were things stored on the
 19 floorboards. He talks about backpacks and with toys and them [sic].
 He talks about diaper bags and other miscellaneous things. Certainly
 those have potential to do it. Could be a limb of somebody. Possible.
 And, of course, Dr. Hoffman believes it was the seat, and I can't refute
 20 that. I'm just saying there's more things that could have done it than
 just the seat, in my opinion.

21 Smith Deposition, pg. 14-15.

22 Question: All right. Do you have an opinion to a reasonable degree of
 23 engineering certainty that the release handle had an impact with the
 back of the front seat?

24 Answer: No. I can't establish that as a fact. I would defer to Dr. Hoffman on
 that.

25 Smith Deposition, pg. 15.

1 Lindner's accident reconstruction expert, Donald Stevens, testified that he had
 2 reviewed Hoffman's deposition testimony and had highlighted some areas he thought
 3 relevant to his role in the case. One area referenced by Stevens was the following
 4 testimony of Hoffman:

5 Question: What degree of certainty do you attach to your opinion that the release
 6 handle in this case was depressed and caused the carrier to release
 7 back?

8 Answer (Hoffman): I would say as certain as I possibly could be.

9 Question: And part of my point in the question is, in your mind, you know it was
 10 contact with the front seat back, as opposed to some flailing arm or
 11 some other object in the vehicle hitting the release handle.

12 Answer: Well, a flailing arm cannot get in-between to do the kind of damage.

13 Hoffman Deposition, pg. 114. In his deposition, Stevens was then asked:

14 Question: Do you agree with that or have no opinion about it one way or another?

15 Answer: I have not analyzed the car seat to the extent that Mr. Hoffman has. I
 16 was interested in this section because I believe that there are other
 17 opportunities to depress the release lever than just the seat back. And
 18 so I was interested to find what his opinion was after analyzing the car
 19 seat about what may have depressed it.

20 Question: Are you going to render an opinion in this case specifically what hit the
 21 release handle?

22 Answer: No. I could not say specifically what hit it. What I have done is
 23 consider the testimony about what the environment was like, and if I
 24 were asked, I could say what the possibilities that I see were for impact
 25 and release based upon the kinematics of the vehicle.

26 Stevens Deposition, pgs. 20-21. Stevens was later asked:

Question: I guess my question is: Do you agree with him [Hoffman] or disagree or
 not have an opinion about that area at all?

Answer: I understand your question. What – what – the opinion that I hold is
 that there are objects and people in the vehicle in addition to the seat
 back. So exclusive of his testimony, I would have told you that I could
 see at least three different ways to release the handle, but I have not
 analyzed the seat, the subject accident seat as he has. So again, I
 have to step back and defer to him on that opinion.

Stevens Deposition, pg 21-22. While both of Lindner's other experts identified other
 possibilities existed for the release of the handle based on the environment within the
 Explorer, both deferred to Hoffman's testimony as to the specific cause of the release.
 While each identified possible mechanisms by which the handle could have been released,

1 neither performed any testing nor did any other work with the child restraint that would form
2 the basis of admissible expert opinion that the child restraint system was defectively
3 designed due to a vulnerability to unintended unlatching during the dynamics of a rollover
4 as the result of the release handle being released due to being struck or hit by something
5 other than the front seat. As both Smith and Stevens expressly deferred to Hoffman as the
6 relevant expert regarding the manner in which the release handle was released, the burden
7 rests on Lindner to establish that Hoffman's expert opinion on the issue is admissible.
8 Hoffman's opinion, however, rested on his determination (from a photograph) that he knew
9 something hit the back of the front seat. Critically, however, Hoffman conceded that he
10 assumed the object hitting the front seat was the release handle, and that this assumption
11 rested upon the fact that in sled and crash testing, child seats hit the front seats
12 approximately half the time. As Hoffman acknowledged, however, the material issue is not
13 whether the child seat hit the front seat, but whether the release handle hit the front seat.
14 As to that issue, Hoffman conceded the lack of any empirical evidence indicating that the
15 release handle would hit the front seat. Lindner has not directed the court's attention to
16 any other evidence by which Hoffman formed his opinion that the release handle hit the
17 front seat in the August 2008 accident. Lindner has not proffered any admissible expert
18 opinion that, in rollover accidents generally, the release handle is vulnerable to hitting the
19 front seat and releasing the carrier from the convenience base.

20 Lindner points to Evenflo's receipt of six consumer reports alleging the separation of
21 an Embrace carrier from its convenience base during a vehicle rollover event. He faults
22 Evenflo for failing to take any meaningful investigation of these complaints, or to conduct
23 any testing. While Lindner asserts that Hoffman was the first person to ask and answer the
24 question whether there was something about the design of the release handle that
25 rendered it vulnerable to an unintended release during a rollover, Hoffman did not perform
26

1 any testing to confirm his hypothesis that the design rendered the release handle
2 vulnerable to hitting the front seat in a rollover event.

3 In his deposition, Hoffman opined numerous times that the cause of the separation
4 of the carrier from its convenience base was the release handle striking the front seat (or
5 the front seat striking the release handle). While Hoffman asserted a certainty as to this
6 opinion, his own deposition testimony established that the basis of his opinion was an
7 untested assumption. Accordingly, material to Lindner's claims against Evenflo are (a)
8 whether the design of the release handle rendered it vulnerable to release by striking (or
9 being struck by) the front seat and (b) whether the release handle was released because it
10 struck (or was struck by) the front seat. The complexity and nature of this material issue is
11 beyond the common experience, and a lay juror would lack the necessary knowledge and
12 experience to render a just and proper decision in the absence of expert testimony.
13 Hoffman's opinion testimony on these material issues is inadmissible, as it rests on nothing
14 more than his assumption that the release handle hit the front seat, and that assumption
15 rested on (a) a photograph interpreted as evidence that something hit the front seat, and
16 (b) empirical evidence that child seats hit the front seats during crash and sled testing.
17 Hoffman offered nothing to support his assumption that the release handle hit the front
18 seat. Lindner has not identified any other admissible expert opinion testimony.
19 Accordingly,

20 THE COURT **ORDERS** that defendant Evenflo Company, Inc.'s Motion for Summary
21 Judgment Due to Lack of Admissible Evidence of a Design Defect (#56) is GRANTED.
22 Plaintiffs' claims against Evenflo Company, Inc. are DISMISSED with prejudice.

23 DATED this 9 day of February, 2012.

24
25 
26 Lloyd D. George
United States District Judge